

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TUAMEKA E. HUGGINS**

Claimant

VS.

**YORK UPG WICHITA**

Respondent

AND

**INSURANCE COMPANY**

**STATE OF PENNSYLVANIA**

Insurance Carrier

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Docket No. 1,012,043

**ORDER**

Respondent and its insurance carrier (respondent) appealed the February 6, 2004, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

Claimant alleges she injured her back as the result of a February 2, 2002, accident and the work she performed for respondent each workday afterwards through June 17, 2003, which was her last day of employment with respondent.

In the February 6, 2004, preliminary hearing Order, Judge Barnes found claimant was injured while working for respondent and, consequently, granted claimant's request for medical benefits and temporary total disability benefits.

Respondent contends Judge Barnes erred. Respondent argues claimant failed to prove she injured her back while working for respondent. Instead, respondent argues claimant's back complaints are the result of a chronic condition that preceded her employment with its company. Respondent also challenges whether claimant should be awarded temporary total disability benefits while she is receiving short-term disability benefits and while she is receiving unemployment benefits. In short, respondent requests this Board to deny claimant's request for benefits and, in the alternative, address the Judge's award of temporary total disability benefits.

Conversely, claimant argues the Board should dismiss this appeal as it does not have jurisdiction to review this preliminary hearing order as the issue presented is the

nature and extent of injury rather than whether claimant sustained a work-related accident. In the alternative, claimant contends the evidence establishes she injured her back in a series of repetitive traumas while performing her regular work duties through her last day of employment with respondent.

The issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review this preliminary hearing Order and determine whether claimant's alleged back injury arose out of and in the course of employment with respondent?
2. If so, did claimant injure her back while working for respondent in an accident that arose out of and in the course of her employment?
3. At this juncture of the claim, does the Board have jurisdiction to review the issue whether claimant is entitled to receive temporary total disability benefits?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

Claimant argues the Board does not have jurisdiction to review the Judge's preliminary hearing finding that claimant injured her back while working for respondent. The Board disagrees. The issue whether an injury arose out of and in the course of employment is an issue that is specifically listed as one that this Board has jurisdiction to review in an appeal from a preliminary hearing order.<sup>1</sup> Consequently, the Board denies claimant's request to dismiss this appeal.

In October 2000, claimant began working for respondent, which manufactures air conditioners. On February 2, 2002, an air conditioning unit blew off an assembly line with parts of the unit knocking claimant backwards into a computer table and onto the floor. Despite that accident, claimant continued to work for respondent through June 17, 2003, when she stopped working at her personal physician's direction.

Claimant alleges the February 2002 accident injured her abdomen, breast and back. Moreover, claimant also alleges she injured her back through her last day of employment with respondent as her back pain increased following the February 2002 incident while she was performing the job of pack out. In that job, claimant boxed and wrapped air conditioning units.

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<sup>1</sup> See K.S.A. 44-534a(a)(2).

Respondent challenges claimant's credibility as claimant testified she advised both the company nurse and emergency room personnel within days of the February 2002 incident that she was experiencing back pain. But neither the emergency room records nor the company nurse corroborates claimant's testimony. Instead, the emergency room records contain a diagram on which claimant failed to note any back complaints. Claimant also saw respondent's company doctor on two occasions shortly after the February 2002 incident but she did not report any back complaints to him.

Although respondent's records do not indicate that claimant was making back complaints contemporaneously with the February 2002 incident, the company's records do show that in May 2002 claimant requested a leave of absence to obtain physical therapy for her back. But the paperwork prepared for that leave request indicates claimant had chronic low back pain that had existed for approximately six years.

The parties deposed claimant's family doctor, Dr. Ronald C. Brown. According to Dr. Brown's records, the doctor treated claimant for back complaints before the February 2002 incident. According to the doctor's records, Dr. Brown saw claimant in November 2000 for back complaints but did not see her again for back complaints until March 4, 2002.

Claimant returned to Dr. Brown again in May 2002 for back complaints. But neither entry in the doctor's records for the March and May 2002 visits indicates claimant had sustained any specific trauma. However, the doctor's records do indicate claimant saw the doctor on June 26, 2002, and that she was complaining her job duties were making her back pain worse. According to Dr. Brown and his records, claimant returned for follow-up visits regarding her back complaints in July 2002; January, February, April, May, June and July 2003 and January 2004.

During the course of treating claimant, Dr. Brown eventually recommended that claimant not work and, further, in July 2003 recommended that claimant pursue a workers compensation claim for her back injury.

At this juncture, the Board finds no reason to disturb the Judge's finding that claimant injured her back while working for respondent. As indicated above, the medical evidence indicates claimant reported back pain to her family physician within 30 days of the February 2002 incident. Moreover, the medical records indicate that following the February 2002 incident, claimant began seeing her doctor on a regular basis for ongoing back pain and that in June 2002 she specifically related her worsening symptoms to her work. Moreover, Dr. Brown's testimony established that claimant's work activities following February 2002 injured and aggravated her back condition.

Accordingly, the Board finds that claimant injured her back while working for respondent. The Board also finds and concludes that claimant's back injury arose out of and in the course of her employment with respondent.

Respondent requests the Board to address whether claimant is entitled to receive temporary total disability benefits while she is receiving short-term disability benefits and unemployment benefits. Whether a worker satisfies the definition of being temporarily and totally disabled during a certain period or whether an employer may be entitled to some type of credit when considering the amount of temporary total disability benefits that may be due an injured worker are not issues the Board has jurisdiction to address in an appeal from a preliminary hearing award. The respondent, however, may raise those issues to the Judge when the claim is ready for final award.

Based upon the above, the February 6, 2004, preliminary hearing Order should be affirmed.

Finally, at the preliminary hearing and at Dr. Brown's deposition, counsel introduced hundreds of pages of medical records, many of which were not pertinent to the issues. For future reference, counsel are requested to introduce only those records that have some significance or merit to deciding the issues in the claim. By reviewing the medical records in advance and introducing only those that are material to the issues at hand, the record will not be overburdened with documents possessing little relevance or importance. And, more importantly, counsel may avoid the time and expense of a conference with the Board to identify the records containing pertinent information.

**WHEREFORE**, the Board affirms the February 6, 2004, Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2004.

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BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant  
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director